IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1110 OF 1983
With
CROSS OBJECTION NO. 38 OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE ORIENTAL FIRE & GENERAL INSURANCE CO. LTD. & ORS. - Appellant(s)
Versus
DR. KISHORBHAI KHEMPALBHAI ASNANI - Respondent(s)

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Appearance :
Shri Uday R. Bhatt for Appellant(s) : 1.
None for Appellant(s) : 2 - 3.
Ms. Jirga D. Jhaveri for Shri S.K. Jhaveri for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/06/2007

ORAL JUDGMENT

The Insurance Company, driver and owner of the offending vehicle bearing Registration No. GJF-2856, being aggrieved by the

judgement and award dated 27th April, 1983 passed by the learned Chairman, Motor Accident Claims Tribunal, District: Banaskantha, Palanpur in M.A.C.P. No. 114 of 1981, are before this Court with the submission that the learned Tribunal below was unjustified in holding the driver of the vehicle liable and erred in awarding a sum of Rs.25,000/-, while the original claimant, Dr. Kishorebhai Khempalbhai Asnani, has filed the Cross Objections seeking further sum of Rs.15,000/-.

2. Shri Uday R. Bhatt, learned Counsel, when was confronted with the judgement of the Apex Court in the matter of ***H. S. Ahammed Hussain & Anr. vs. Irfan Ahammed & Anr.,*** [***AIR 2002 SC 2483***], wherein the Apex Court has that an appeal on behalf of the driver, owner and Insurance Company would not be maintainable, Shri Bhatt submitted that appellant Nos.2 and 3 be transposed as party respondents. The prayer is allowed. Let the Office make necessary corrections.

3. The Insurance Company, in the opinion of this Court, would have limited defences available under Section 95(2) of the Motor Vehicles Act. The Insurance Company would not be allowed to challenge the award on merits unless the merits are affecting the rights conferred upon the Insurance Company under Section 95(2) of the Act.

4. In the present case, the claimant, an eye surgeon, while he was trying to repair the fan belt of the vehicle, the driver started the vehicle, which resulted into scrapping/amputation of small portion of the index finger of the left hand.

5. It has come on record that after the claimant had suffered

the injury, his capacity as an eye surgeon has reduced to some extent; on the date of the accident, the claimant was 36 years and as an eye surgeon, he had better prospects.

6. The Insurance Company even if is allowed to raise the question on merits, then too, I will have to hold that the learned Tribunal below was not wrong in holding the driver guilty of negligence.

7. So far as the quantum is concerned, taking into consideration that a young eye surgeon had suffered scrapping/amputation of small portion of the finger and his ability/capability as an eye surgeon is affected to some extent, I must hold that the learned Tribunal below was unjustified in awarding a sum of Rs.25,000/-.

8. In the opinion of this Court, the claimant was entitled to much more, even beyond the cross objections, however, the cross objections are confined to Rs.15,000/- only and therefore, I would allow the cross objections and direct that in addition to the amount already awarded by the learned Tribunal below, the claimant- respondent No.1 would be entitled to a sum of Rs.15,000/- with 9% interest from the date of the claim petition till the date of realisation. The appeal is dismissed, however, the cross objections are allowed. No costs.

[R.S.Garg, J.]

*kamlesh**